

NATIONAL PARKS CONSERVATION ASSOCIATION®

Protecting Parks for Future GenerationsSM

September 6, 2002

Sherry Scott, P.G.
Water Policy Coordinator
South Florida Water Management District
3301 Gun Club Road
West Palm Beach, Florida 33146-4680

Comments on the Draft Reservations of Water for the Environment and Assurances for
Existing Legal Sources Consistent with Federal and State Law

Dear Ms. Scott:

On behalf of the National Parks Conservation Association (NPCA) I thank you for this opportunity to comment on the draft white paper on Reservations of Water for the Environment and Assurances for Existing Legal Sources Consistent with Federal and State Law. NPCA is a national organization dedicated to protecting and enhancing America's National Park System for present and future generations. We have over 350,000 members nationwide and over 19,000 in the State of Florida.

We are pleased to see an introductory analysis of water reservations begun by this document, and believe that this is the first step toward a necessary discussion about the pre-Comprehensive Everglades Restoration Plan (CERP) baseline and the way in which water will be reserved during the implementation of the CERP. Unfortunately, we have grave concerns about the stated assurances for the continued delivery to the natural system of the quantity and quality of water necessary to sustain life within those areas. This document identifies some steps in addressing the pre-CERP needs of the natural system, but does not go far enough. Specifically, the Water Resources Development Act of 2000 (WRDA 2000) states that "as a result of implementation of the Plan, the Secretary [of the Army] and the non-Federal sponsor shall not eliminate or transfer the existing legal source of water including those for...(iv) water supply for Everglades National Park; or (v) water supply for fish and wildlife." Fish and wildlife within natural areas must be protected against losing the water they need, just as a consumptive use permittee is assured the same quantity and quality of water as existed prior to implementing the CERP. To accomplish this a pre-CERP baseline of water available for those natural systems needs to be developed, with water supplies assured for those existing users.

We urge you to develop and define the needs of the natural system in terms of environmental water demands. While we understand that historically the District has not officially supplied water to some estuaries for the purposes of maintaining fish and wildlife

SOUTH FLORIDA OFFICE
1909 Harrison Street, Suite 208
Hollywood, FL 33020
(954) 926-6327 ♦ Fax (954) 921-7810
southflorida@npca.org ♦ www.npca.org



NATIONAL OFFICE
1300 19th Street, N.W. ♦ Washington, D.C. 20036
(202) 223-NPCA(6722) ♦ Fax (202) 659-0650
npca@npca.org ♦ www.npca.org

populations, the ability to do so has existed but has not often been exercised. We understand that undertaking such an initiative may be time consuming, but some effort toward understanding the needs of many receiving bodies is required to ensure that the latter section of the federal statute is complied with as well as maintaining an adequate supply of water to sustain such populations.

We support the selection of the rainfall delivery schedule to address the on-going discussion of the best water management for Everglades National Park and the Water Conservation Areas, but are concerned about the restraints unduly associated with their schedule. Section V., Part C. "Establishing a Pre-CERP Reservation of Water for the Environment" states that "considerations for the existing storage, conveyance and existing legal source constraints of the current system" will be the basis for the environmental delivery assumptions. These assumptions are to be based on "modeling analysis through the SFWMM" using estimates from the Natural System Model and the CERP environmental performance measures. The implementation of the rainfall driven schedule, originally developed through the Lower East Coast Regional Water Supply Plan (LECRWSP), is now intended to be included in the pre-CERP baseline and therefore will be covered under the savings clause of WRDA 2000 and other applicable laws. Therefore the rainfall-driven schedule for the natural system cannot be constrained by the existing legal sources because they estimate pre-CERP conditions, which are, by law, not constrained by existing legal sources. In fact, the District's definition of existing legal sources is also cause for concern; NPCA concurs with the comments and suggestions put forth by World Wildlife Fund, Natural Resources Defense Council and the Environmental and Land Use Law Center. We urge you to work closely with the Department of Interior to finalize the rainfall driven formula, as they are the primary clients of this schedule.

The implication of this section, as written, is that there will be conflict either between the urban uses and the natural areas, or within the natural areas. This document should be intended to resolve this conflict, but rather, the document compounds the problems. Furthermore, a pre-CERP baseline cannot incorporate CERP assumptions. If after modeling the baseline the results show that water resources have been over-allocated, then the onus for making up that shortfall should not be placed on the environment. In fact, any changes that must be incurred as a result of this analysis should not further degrade the natural system because it, too, is protected by the savings clause.

This section continues to contradict itself on the intention of the rainfall-driven schedule. The schedule is defined to "improve[] the timing, flow and distribution of water for the enhancement and protection of fish, wildlife and vegetation." This definition is consistent with WRDA 2000 and assists in developing pre-CERP conditions for one area of the natural system. Where the document errs is in its conclusion that after modeling analysis, "the portion of the rainfall driven deliveries which are projected to protect fish and wildlife will be reserved from use through state rule." What part of "the enhancement and protection of fish, wildlife and vegetation" in the first definition is not a part of "fish and wildlife" in this final comment? We urge you to refine this statement to ensure that the proper amount of water is reserved for the natural system. The entire concept of the rainfall-driven operations is to mimic a natural flow through this main stretch of the Everglades and must be maintained in its entirety for the protection of the fish and wildlife existing there.

This draft insufficiently acknowledges the identification of Existing Legal Source User Basins – particularly Section IV subsections C and D – and fails to adequately develop the water supply needs of receiving bodies of water such as Biscayne Bay. The WRDA 2000 specifically identifies Everglades National Park as a user, which this document positively expounds on and includes in the Table on page 16. WRDA 2000 also identifies “fish and wildlife” as a user protected under the savings clause, and therefore their water supply needs should be further developed in order to adequately comply with the federal law. While Everglades National Park and Florida Bay are identified as a Legal Source User Basin, Biscayne Bay, Biscayne National Park and Bay, St. Lucie and Caloosahatchee estuaries and others are not clearly identified. These other receiving bodies deserve a reservation of water under the pre-CERP baseline not only to be consistent with federal law, but also to protect and preserve the natural resources that are contained within them.

In part to resolve the issue of pre-CERP water supply for the environment, we must look at the amount of water that has been provided to those systems in the past. Unfortunately, this document proposes to entirely exclude all “regulatory discharges from the volume probability curves to define existing legal sources as these discharges have not been historically depended upon by consumptive uses or the natural system.” While it is understood that CERP is designed to capture a significant portion of this particular water, some amount of it is necessary and is depended upon by the natural system. This statement should be refined and accompanied by a parallel analysis of the appropriate volume of freshwater that each receiving body is “dependent” upon for the survival of its requisite fish and wildlife. In Appendix C, “general principles” for “demand conditions” are defined such that “demands will be based on historic operational deliveries under federal regulation schedules and other historic deliveries for beneficial uses.” Again, we argue that some amount of water within a regulatory discharge is beneficial to the environment; that amount should be determined in order to maintain the 2000 baseline condition for fish and wildlife in those receiving bodies. It is important to include such environmental water demands in the pre-CERP baseline to grant them their protection under the savings clause of WRDA 2000. Beneficial use is not clearly defined in this document and therefore provides no assurances that the natural system will be protected.

Until this time, the South Florida Water Management District (SFWMD) has not traditionally exercised their right to make reservations of water to the environment; it is clear that this needs to be done now. We are pleased to see that this is being contemplated for at least one area. The SFWMD has implemented water shortage plans and operations; however, these are not based on the amount of water that a natural system should get, but rather on the amount of water that it needs to have in order to do no harm. One such tool is the use of minimum flows and levels (MFLs), some of which are complete, and others are in development. Still, MFLs are a reference to water supply and do not provide the necessary amount of water required for fish and wildlife. A new approach should be taken to preserve the necessary water deliveries to Biscayne Bay, Florida Bay and other natural areas for the protection of fish and wildlife, however, that approach is not sufficiently addressed in this draft document.

This document discusses the important issue regarding the pre-CERP baseline of addressing the authorized, but unimplemented projects such as Modified Water Delivery and the C-111 projects. Together, these two projects increase and further refine water deliveries, in place

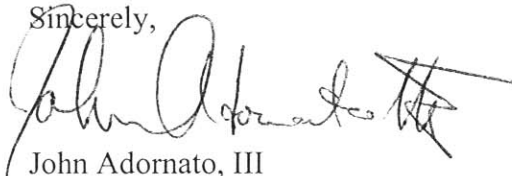
and time, for Everglades National Park, and were precursors to the entire CERP. NPCA understands the dilemma in that the current timeline for resolving the water reservations under these projects does not conform to the deadline for finalization of this Water Reservations document. We understand that operations for these projects, therefore, may not be included in the final version of the document. With that said, we do believe that a framework for addressing these projects in the future should be built now in order to avoid a battle over water rights. It is important to reiterate that the project was authorized prior to WRDA 2000, implying certain consequences for their implementation. The water supplied for these projects should ultimately be preserved against being permitted for consumptive uses, either by incorporating it into the pre-CERP baseline at a future date, or by adopting a reservation for it. In addition, water for these projects should come from other-than-CERP water, while being exempt from claims from other users under the savings clause, since the projects are not part of implementing the CERP, a requirement of invoking the savings clause argument. When these projects come on line, we should have a mechanism in place to provide the water necessary. We urge you to develop this protocol under the authority of this document.

We urge you to resolve the quantity of water available for the natural system on a regional basis before this white paper is finalized. Compounding the results of that analysis will be the intention of CERP to remove human-made barriers and compartmentalization that originally contributed to the decline of the Everglades. With this decompartmentalization, the idea of splitting Everglades National Park from the Water Conservation Areas 3A and 3B will be moot; the only changes to the hydropatterns of those areas will be how much water is put into the system at the top. A thorough analysis of the changes should be incorporated into this document through adaptive management built into the CERP.

NPCA supports the District's initiative to develop parameters to reserve water as it becomes available through implementation of individual CERP projects. We use this opportunity to express the fact that the proper amounts of water required to restore the remaining Everglades should be provided to the natural system according to the Plan and the processes of adaptive management. Water reservations are intended to reserve that water necessary for the restoration of the ecosystem and only then should excess "new water" be available for other purposes.

Thank you again for the opportunity to comment on this draft white paper. In addition to the comments provided here, we support the comments that have been submitted by the Environmental and Land Use Law Center, Natural Resources Defense Council and the World Wildlife Fund and Audubon of Florida. We look forward to working with you in the future to assure that historic, beneficial water supply for fish and wildlife is protected and that future water contained by CERP projects are adequately reserved for the natural environment.

Sincerely,

A handwritten signature in black ink, appearing to read "John Adornato, III". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

John Adornato, III
Regional Representative